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Report of the Working Group on the Universal Periodic Review*

Nepal

Addendum

Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review

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1. The Government of Nepal (GoN) welcomes and takes due consideration of the recommendations made during the interactive dialogue with the reviewing States held on 4 November 2015 during the second cycle of the Universal Periodic Review.

2. The GoN respects the United Nations Human Rights system, reiterates its unflinching commitment to the human rights standards and processes set forth by the United Nations and is fully committed to implement the recommendations received through the Universal Periodic Review.

3. The GoN organized several rounds of discussions with the relevant ministries for disseminating information and finalizing Nepal's position on the recommendations. Further, a consultation was held with National Human Rights Institutions (NHRIs), Civil Society Organizations, and human rights defenders to collect their feed-back and views on the recommendations and to plan for the implementation of the recommendations.

4. Against this backdrop, the GoN provides information in this Addendum regarding its final position on the recommendations which are mentioned in the Report of the Working Group on the UPR (A/HRC/31/9), hereinafter referred to as the Report.

5. The GoN reconfirms that the recommendations listed under the paragraph 121 (paragraphs 121.1 to 121.32) of the Report enjoy the support of Nepal.

6. It reconfirms that the recommendations listed under the paragraph 122 (paragraphs 122.1 to 122.115) of the Report enjoy the support of Nepal which considers that they are already implemented or in the process of implementation.

7. It reconfirms that the recommendations listed under the paragraph 124 (paragraphs 124.1 to 124.18) of the Report do not enjoy the support of Nepal and would thus be noted.

8. In relation to the recommendations listed under the paragraph 123 (paragraphs 123.1 to 123.30) of the Report, 5 recommendations enjoy the support and 25 recommendations don't enjoy the support of the GoN and would thus be noted. Therefore, the GoN has **accepted 152 and noted 43 of total 195 recommendations**.

9. The recommendations that the GoN accepts are based on:

(a) Human rights related international conventions to which Nepal is a party;

(b) Constitution of Nepal (fundamental rights, directive principles and policies);

(c) Periodic development plan, national human rights action plan, sectoral and thematic action plans and policies;

(d) Recommendations of National Human Rights Commission;

(e) Directive orders of the Supreme Court.

10. Nepal doesn't support those recommendations for the time being which require:

(a) Proper assessment on the existing implementation capacity;

(b) Development of requisite legal, policy and institutional infrastructures;

(c) More investment and resources.

11. The position of the GoN on the recommendations presented under paragraph 123 of the Report is categorically presented below.

12. **Recommendation mentioned in paragraph 123 of the Report which enjoys the support of Nepal that it is already implemented or in the process of implementation is given below:**

123.25. Decriminalize the act of attempted suicide (Haiti).

13. With regard to the recommendation 123.25, the act of attempt to suicide is not criminalized by the domestic legislation of Nepal.

14. **Recommendations mentioned in paragraph 123 of the Report which enjoy the support of Nepal are given below:**

123.1. Study the possibility of accepting the competence of the Committee against Torture (Panama);

123.2. Study the possibility of the ratification of the OP-CAT (Panama);

123.21. Take all necessary measures towards acceding to the Rome Statute of the ICC (Cyprus);

123.28. Amend the 2014 Commission on Investigation of Disappeared Persons, Truth and Reconciliation Act (TRC) in compliance with the Supreme Court ruling of 26 February, 2015 in order to uphold international standards relating to accountability for gross violations of international human rights and international humanitarian law (Denmark).

15. With regard to the recommendations noted above in 123.28, two separate Rules of Truth and Reconciliation Commission and Commission on Investigation of Enforced Disappeared Persons have been approved by the Council of Ministers by taking account of the Supreme Court ruling of 26 February, 2015. Further, in constitutional jurisprudence of Nepal, the legislative provision declared null or void by the Supreme Court ceases its legal force and consequently doesn't come into operation. Likewise, the interpretation of law and constitution and the precedent made by the Supreme Court is enforceable as good as legislative provision.

16. **Recommendations mentioned in paragraph 123 of the Report which don't enjoy the support of Nepal and thus be noted are given below:**

123.3. Accede to the OP-CAT (New Zealand) (Czech Republic);

123.4. Ratify the OP-CAT (Montenegro) (Denmark) (Uruguay) (Ghana) (Germany);

123.5. Sign and ratify OP-CAT (Portugal);

123.6. Sign OP-CAT (Sweden);

17. With regard to the recommendations noted above in 123.3, 123.4, 123.5, 123.6, the GoN pursues a policy to build requisite infrastructure before joining any international instruments. For this, the GoN at present is studying the possibility to ratify the Optional Protocol which includes assessing the existing infrastructures including National Preventive Mechanisms and strengthening the existing system for the effective implementation of the Protocol. A Bill in line with the international standard to fully criminalize torture and ill treatment has been submitted to the Legislature Parliament. The GoN believes that transformation of this Bill into Act will serve towards building one of the requisite infrastructures for the ratification of the Protocol.

123.7. Ratify the ICRMW (Timor-Leste) (Sierra Leone);

123.8. Consider ratifying ICRMW (Philippines) (Egypt);

123.9. Continue its consideration to ratify the ICRMW (Indonesia);

18. With regard to the recommendations noted above in 123.7, 123.8 and 123.9, the GoN pursues a policy to build requisite infrastructure before joining any international instruments. After developing the requisite legal, policy and institutional mechanisms, the GoN will consider towards joining this Convention in due course of time.

123.10. Ratify the International Covenant for the Protection of All Persons from Enforced Disappearance (ICPPED) (Argentina) (Sierra Leone) (France) (Japan) (Ghana);

123.11. Ratify and implement the ICPPED, (Paraguay);

19. With regard to the recommendations noted above in 123.10 and 123.11, the GoN pursues the policy to build requisite infrastructure before joining any international instruments. The GoN at present is in the process of developing requisite infrastructures and strengthening the existing ones for the ratification the Convention. A Bill on Criminal Code submitted at the Legislature Parliament has provisions to criminalize the act of enforced disappearance. The GoN believes that transformation of this Bill into Act will serve towards building the requisite infrastructure for the ratification of the Convention.

123.12. Consider ratifying the Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially women and children (Egypt);

20. With regard to the recommendations noted above in 123.12, the GoN pursues a policy to build requisite infrastructure before joining any international instruments. After developing the requisite legal, policy and institutional mechanisms, the GoN will consider towards joining this Protocol in due course of time.

123.13. Ratify the Rome Statute of the ICC (Switzerland) (Portugal) (Germany) (Ghana);

123.14. Ratify and implement the Rome Statute (Paraguay);

123.15. Ratify the Rome Statute of the ICC and incorporate its provisions into national legislation; and accede to the Agreement on Privileges and Immunities of the Court (Estonia);

123.16. Ratify and implement in the national legislation the Rome Statute of the ICC (Costa Rica);

123.17. Ratify the Rome Statute of the ICC and implement it in its national legislation (Hungary);

123.18. Accede to the Rome Statute of the ICC (Czech Republic);

123.19. Accede to the Rome Statute of the ICC and the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity (Uruguay);

123.20. Accede to and fully align its national legislation with the Rome Statute of the ICC (Latvia);

21. With regard to the recommendations noted above in 123.13, 123.14, 123.15, 123.16, 123.17, 123.18, 123.19, and 123.20, the GoN pursues the policy to build requisite infrastructure before joining any international instruments. Nepal at present is considering the report of the task force constituted to study the possibility to ratify the Statute. A Bill on implementation of four Geneva Conventions has been drafted which has the provisions to fully criminalize the international crimes including crime against humanity, war crime and genocide. The GoN will submit the Bill to the Legislature Parliament after completing necessary process. It believes that the transformation of this Bill into Act will serve towards building requisite infrastructure for the ratification of the Statute.

123.22. Ratify ILO Convention No. 87 (Algeria);

22. With regard to the recommendations noted above in 123.22, the GoN pursues the policy to build requisite infrastructure before joining any international instruments. After

developing the requisite legal, policy and institutional mechanisms, the GoN will consider towards joining this Convention in due course of time.

> 123.23 Consider amending the Constitution to allow women to convey their citizenship to their children and foreign spouses on an equal basis with men (United States of America);

23. With regard to the recommendation noted above in 123.23, Article 10 of the Constitution of Nepal guarantees the right of all Nepali citizens to obtain citizenship. The Constitutional provisions on acquisition of citizenship are based on the principle of equality and non-discrimination. As per the Article 11(2)(b), a Nepali child whose father or mother is a citizen of Nepal may acquire Nepali citizenship certificate. Therefore, the Constitution empowers Nepali women to transfer citizenship to their children. Likewise, Article 11(7) mentions that in the case of a person born from a woman who is a citizen of Nepal and married to a foreign citizen, the person may acquire the naturalized citizenship of Nepal in accordance with the Federal law if s/he has permanently resided in Nepal and has not acquired the citizenship of a foreign country. Further, the Constitution provides that other provisions relating to the acquisition, reacquisition and termination of citizenship shall be as provided for in the Federal Law. Likewise, the Nepal Citizenship Act, 2006 fully recognizes and protects the separate identity of Nepalese women while granting citizenship. It has detailed provisions of granting citizenship on the basis of descent, birth, and through naturalization.

> 123.24. Enact consolidated laws addressing all types of sexual violence effectively, with provisions of no statutory limitation on rape and other sexual violence, adequate witness and victim protection mechanisms, compensation from state and measures to address special needs of girls below 16 (Norway);

24. With regard to the recommendation noted above in 123.24, domestic legislations of Nepal fully criminalize all types of sexual and gender based violence. The GoN accepts considering enactment of consolidated laws addressing all types of sexual violence effectively. The statutory limitation on rape has been recently extended from 35 days to six months through the enactment of an Act to amend some Nepal Acts to ensure gender equality and elimination of Gender Based Violence. After assessing the implementation of this extended period, the GoN will consider for further enlargement. Domestic Violence (Crime and Punishment) Act, 2009 and its Rules, and Human Trafficking and Transportation (control) Act, 2007 and its Rules have the provisions on mechanism for the protection of witness and victim. Furthermore, the GoN has been drafting two separate bills on witness and victim protection. The Act to amend some Nepal Acts to ensure gender equality and elimination of Gender Based Violence, 2015 ensures that if perpetrator is not able to provide the given compensation to the victim of rape, the victim of all age group receives compensation from the State fund.

> 123.26. Accept the request of visit by the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, the Special Rapporteur on human rights defenders, the United Nations Working Group on enforced or involuntary disappearances and cooperate fully with the mandate holders (Hungary);

> 123.27. Accept the requests to visit the country made by some special procedures, including the request made by the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence (Uruguay);

25. With regard to the recommendations noted in 123.26 and 123.27, the GoN has accepted the visit requests of various mandate holders in different times. It is committed to further strengthen its engagement with the Special Procedures and UN human rights mechanisms. In order to make the country visits more effective and fruitful, the GoN will invite the mandate holders and Special Procedures on case to case basis.

123.29. Raise the age of criminal responsibility of children that currently stands at 10 years of age (Chile);

26. With regard to the recommendations noted in 123.29, the Children's Act, 1992 does not impose full criminal liability on a minor below the age of 16 years. The Act provisions to admonish and convince the child of the age 10 years or above and up to 14 years having committed an offence punishable with fine under the relevant law. If the offence committed is punishable with imprisonment, the minor shall be punished with imprisonment for a term which may extend up to six months depending on the offence. If a child committing an offence is 14 years or above and below 16 years, s/he shall be punished with half of the penalty to be imposed under law on a person who has attained the age of majority.

27. Furthermore, the Act has a provision that any person having committed any offence during childhood will not be disqualified to hold any office or to enjoy any facility under a law for reason of committing such an offence. Likewise, for the purpose of determination of counts of offence, an offence committed during childhood shall not be counted and even if a child commits the same offence more than once, s/he shall not be liable to additional punishment on the basis of additional counts of offence.

123.30. Take measures to implement the Supreme Court's decision concerning same sex marriage (Brazil).

28. With regard to the recommendations in 123.30, the Supreme Court had issued directive order to study and take necessary action regarding same sex marriage. A task force formed by the GoN in order to study the provision of same sex marriage in other jurisdictions and the context of Nepal has submitted its study report which is under consideration at the relevant line agency. The legal identity of LGBTI persons has been recognized and protected by national legislations. They are entitled to get citizenship certificate and passport based on their identity as per the provision of Citizenship Rules, 2008 and Passport Rules, 2015 respectively. The GoN will take further necessary measures for the protection of rights of LGBTI persons in due course of time.

Recent development in the field of human rights

29. After the UPR Working Group meeting in November 2015, some considerable progresses have been made in the field of human rights. The GoN is pleased to share some of those progresses as mentioned below:

(a) The Legislature Parliament has made first amendment of the Constitution to address the demand and concerns of *Madhesh* based political parties. The amendment ensures proportional inclusion of the marginalized and disadvantaged in the State bodies (Article 42 regarding Right to Social Justice); and delineation of electoral constituencies primarily based on population and secondarily based on geography.

(b) A task force constituted in order to draft the necessary legislations for the implementation of the new Constitution has identified necessary legislations to be enacted or amended in light of the Constitution.

(c) 193 prevailing Acts have been amended in line with the new Constitution. Amongst others, the amendment has revised the existing quasi judicial power of administrative officials, and granted the power to court of law to try and settle the serious criminal offence with more than one year imprisonment.

(d) Two separate Rules on Truth and Reconciliation Commission and Commission on Investigation of Enforced Disappeared Persons have been approved by the Council of Ministers in line with the Supreme Court ruling of 26 February, 2015.

National Reconstruction Authority Act, 2015 has been enacted and the Authority is in operation for the reconstruction of destroyed infrastructures and the rehabilitation of victims of the devastating earthquake.

Further plan

30. The GoN has planned to develop a National Plan of Action in collaboration with the NHRIs and CSOs for the dissemination and effective implementation of the UPR recommendations.